U.S. Department of Justice

Immigration and Naturalization Service

[redacted]

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

[redacted]

Date: APR 2 8 2000

IN RE: Applicant: [redacted]

APPLICATION: [redacted]

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires my be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

For Terrance M. O'Reilly, Director
Administrative Appeals Office

prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born on November 2, 1977, in Oberhausen, Germany. The applicant's alleged father, [redacted] was born in the United States in November 1954. The applicant's mother, [redacted], was born in Zambia in June 1954 and she became a naturalized U.S. citizen on May 13, 1994. The applicant's parents married each other on January 13, 1979. The applicant was lawfully admitted to the United States on October 16, 1978, as a nonimmigrant visitor. The applicant is seeking a certificate of citizenship under § 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1433.

The director reviewed the record and concluded that the applicant had failed to establish her eligibility under § 322 of the Act, because her relationship to [redacted] is unclear in the record since his name does not appeal on her birth certificate.

On appeal, the applicant's alleged father states that, when the applicant was born in Germany, he and her mother were not married. He states that it is customary in Germany to give the child the surname of the mother if there is no valid marriage certificate. He then acknowledges that he is the legal and lawful father of the applicant.

Section 322(a) of the Act, effective April 1, 1995, provides, in part, that:

> A parent who is a citizen of the United States may apply to the Attorney General for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General that the following conditions have been fulfilled:
>
> (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
>
> (2) The child is physically present in the United States pursuant to a lawful admission (either as an immigrant or nonimmigrant).
>
> (3) The child is under the age of 18 years and in the legal custody of the citizen parent.
>
> (4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age of 16 years and the child meets the requirements for being a child under subparagraph (E) or (F) of § 101(b)(1).
>
> (5) If the citizen parent has not been physically present in the United States or its outlying

[redacted]

possessions for a period or periods totaling not less that 5 years, at least 2 of which were after attaining the age of 14 years-

(A) The child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or

(B) A citizen parent of the citizen parent (grandparent) has been physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age of 14 years.

The record reflects that the applicant's alleged father has satisfied the requirements of § 322(a)(5) of the Act relating to physical presence in the United States. However, he has failed to establish by convincing and probative evidence that he is the applicant's natural father. A mere unsupported statement is not sufficient. Further, all of the requirements of § 322 of the Act must be satisfied prior the applicant's 18th birthday. There are no provisions for approving an application filed under this section once an applicant has reached his or her 18th birthday.

8 C.F.R. 322.2(a)(1) provides that to be eligible for naturalization under § 322 of the Act, a child on whose behalf an application for naturalization has been filed by a parent who is, at the time of filing, a citizen of the United States, must:

Be unmarried and under 18 years of age, both at the time of application and at the time of admission to citizenship;

On appeal, the applicant's alleged father states that the application is based on his citizenship and not on the citizenship of his wife. He also submitted a copy of the above application which was supposedly filed in behalf of the applicant in 1979. There is evidence to show that inquiries were made concerning that application but there is no evidence to show that any action was ever taken. The key to the applicant's dilemma is for her alleged father to establish the requisite father/daughter relationship by clear and convincing evidence, including but not limited to blood testing.

The applicant cannot satisfy the requirements of § 320 of the Act, 8 U.S.C. 1431, because of the failure to establish the father/daughter relationship and because the applicant was not residing in the United States pursuant to a lawful admission for permanent residence at the time her mother naturalized on May 13, 1994.

In deference to the applicant who was lawfully admitted as a nonimmigrant in October 1978 and who has been lingering in a void

since that date, the Associate Commissioner suggests that she may be eligible for citizenship under § 309 of the Act, 8 U.S.C. 1409, if she submits specific probative documentation.

Section 309(a) of the Act, as amended by Pub. L. 99-653, provides in part that the provisions of paragraphs (c), (d), (e), and (g) of § 301, and paragraph (2) of § 308, shall apply as of the date of birth to a person born out of wedlock if-

> (1) a blood relationship between the person and the father is established by clear and convincing evidence,
>
> (2) the father had the nationality of the United States at the time of the person's birth,
>
> (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
>
> (4) while the person is under the age of 18 years-
>
> (A) the person is legitimated under the law of the person's residence or domicile,
>
> (B) the father acknowledges paternity of the person in writing under oath, or
>
> (C) the paternity of the person is established by adjudication of a competent court.

The applicant must satisfy number (1) which may include but is not limited to blood testing or adjudication in a competent court.

If number (1) is satisfied and [redacted] is determined to be the natural father, then number (2) has been satisfied.

The applicant must satisfy number (3) by specific probative documentation which may include but is not limited to several annual income tax records in lieu of a written agreement and dated prior to the applicant's 18th birthday which reflect that she was supported by [redacted], was in a family relationship with him and was residing at the same address, or an agreement in writing which can be proven to have been made prior to the applicant's 18th birthday. A letter written now for then is not acceptable.

If the father/daughter relationship is established then number (4) has been satisfied by the parents marriage in 1979.

The Associate Commissioner has made reference to § 309 of the Act for purposes of information only and meeting those requirements rests entirely with the applicant in another proceedings.

8 C.F.R. 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of

the evidence. The applicant has failed to meet that burden. The appeal will be dismissed.

This decision is without prejudice to the applicant's seeking U.S. citizenship through normal naturalization procedures by filing an Application for Naturalization on Form N-400 with a Service office having jurisdiction over her residence or through other sections of the Act.

ORDER: The appeal is dismissed.